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*ATTORNEYS FOR DEFENDANT
UNITED STATES FOREST SERVICE*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FOREST SERVICE EMPLOYEES FOR
ENVIRONMENTAL ETHICS,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,

Defendant.

No. 9:22-CV-00168-DLC

DEFENDANT'S UNOPPOSED
MOTION FOR EXTENSION OF
TIME TO RESPOND TO
MOTION FOR SUMMARY
JUDGMENT

Defendant United States Forest Service (the “Forest Service”) moves for an extension of time, from January 31, 2023, to February 17, 2023, in which to respond to Plaintiff’s Motion for Summary Judgment. Plaintiff Forest Service Employees for Environmental Ethics (“FSEEE”) takes no position on the requested extension of time. As grounds for this motion, the Forest Service states:

1. On January 10, 2023, FSEEE filed its motion for summary judgment.

FSEEE argues that the Forest Service’s aerial discharge of fire retardant into waters regulated under the Clean Water Act without a permit violates the Clean Water Act. FSEEE’s motion for summary judgment seeks, in part, an injunction that would prohibit aerial application of fire retardants into waters of the United States unless and until the Forest Service obtains a Clean Water Act permit to do so. Doc. 7 at 9.

2. The process to obtain permits to authorize the Forest Service to aerially discharge fire retardant into waters in each of the States will likely require at least a year, and probably a longer period of time.

Consequently, FSEEE’s motion raises issues that directly impact the Forest Service’s ability to fight forest fires effectively using aerial discharges of fire retardant during 2023, at a minimum.

3. In accordance with this Court’s local rules, the Forest Service’s response to the motion for summary judgment is due by January 31, 2023.

4. Because of the significance of the issues presented by FSEEE's motion for summary judgment, the Forest Service needs additional time to prepare its response and coordinate its response with appropriate government officials in the Forest Service and United States Department of Justice.
5. Lead counsel for the Forest Service in this case has calendar conflicts that also prompt the request for an extension of time. Lead counsel was responsible for preparation of the government's merits brief filed on January 17 in the Tenth Circuit in *Center for Biological Diversity v. EPA*, No. 22-9546, which prevented him from immediately turning to preparation of the response to the motion for summary judgment. Lead counsel also has a long-planned vacation from February 3 through February 8.
6. On January 20, 2023, the Forest Service's lead counsel conferred with counsel for FSEEE regarding this motion for an extension of time and was informed that FSEEE takes no position on this request for extension of time.

WHEREFORE, the Court should grant the Forest Service an extension of time to February 17, 2023, in which to respond to FSEEE's motion for summary judgment.

Respectfully submitted this 20th day of January 2023.

TODD KIM
Assistant Attorney General

s/ Alan D. Greenberg
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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2023, I filed the foregoing Defendant's Unopposed Motion for Extension of Time to Respond to Motion for Summary Judgment using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ Alan D. Greenberg
ALAN D. GREENBERG